

REMARKS

The drawings were objected to for a typographical error in Step 76 of Fig. 6. The reference is corrected in the proposed drawing correction, which refers to Fig. 7 in accordance with lines 19 and 20 of page 8 of the specification. Approval of the proposed correction is respectfully requested.

The examiner objected to the abstract. A new shortened abstract is presented and is believed to address the objection.

Applicant acknowledges and appreciate the examiner's indication that claims 14 and 18 are allowable. The examiner's statement that the limitations of claim 14 are not taught singularly, or in combination by the prior art of record is correct. This indication of allowable subject matter in claim 14, however, precludes the rejection of any of claims 15-20. All of these claims depend on claim 14 and incorporate its limitations by reference. There is an apparent mistake on page 14 of the office action when claims 15-17 are stated to be rejected pursuant to a rejection applied to claim 14 because there is no rejection applied to claim 14. The same may be said with respect to claims 19-20, which are said to be rejected pursuant to a rejection of claim 18, but claim 18 is not rejected. Accordingly, all of claims 14-20 should be indicated as allowable. Applicant also maintains the separate patentability of the claims which depend from claim 14, but since the rejection is inappropriate, applicant does not address specific comments to the features of the dependent claims which were not properly rejected.

Claims 1, 7-8 and 21-22 stand rejected under § 103 in view of Hazenfield and Robbins. The rejection is respectfully traversed.

Hazenfield is a system that is directly opposite to the method defined in claim 1 and claims depending therefrom. Hazenfield contemplates the distribution of messages on fixed media as described throughout the Hazenfield patent. For example, in column 4 Hazenfield describes that messages may be provided on compact disks or may be provided on other storage media such as an integrated circuit or a magnetic disk. Hazenfield then transmits control signals that control the playback order of messages included on the previously distributed message media. An example is described in column 5, beginning at line 41 where a server 12 sends play list via a subcarrier radio paging company 30 to transmit a control signal in the form of a play list that controls the playing of messages from previously distributed CD's. Hazenfield thus fails to provide for the message broadcast of claim 1, and fails to disclose the steps of receiving messages and storing received messages as required in claim 1. Claim 1 defines a system in which the messages are broadcast to digital audio media players. The only control signals in the method of claim 1 and its dependent claim relate to the triggering of a message playback which, for example in claim 2, results from recognition of a track end. The examiner concludes on page 4, without any evidence from any prior art, "that it would be obvious to modify Hazenfield to include a message broadcast". This is an improper conclusion of obviousness because it is based upon no evidence whatsoever and directly conflicts with

the explicit statements of Hazenfield where Hazenfield describes the distribution of messages on a fixed media and the issuance of control signals and playback lists for the pre-recorded message media over wireless means. All of the embodiments described in Hazenfield are exactly opposite the examiner's interpretation and proposed modification of Hazenfield. Every embodiment of Hazenfield contemplates the distribution of messages on fixed media, whereas claim 1 concerns a broadcast of messages. There is no evidence for a modification that completely contradicts Hazenfield's disclosure and the examiner's statement that "the transmitted broadcast message could obvious [sic] be an advertisement, for a promotional message instead of control command," is a conclusion unsupported by evidence.

The combination of Hazenfield and Robbins is also unsupported by evidence and unrelated to the invention in claims such as claims 2 and 3, as well as the invention defined in claim 1. Robbins, as clearly set forth in the abstract and summary, contemplates "custom discs." The custom discs provide the DTMF signals that provide control information for the playing of messages. In contrast, in the method of claim 1, and also the method defined in claim 2 and claim 3, a message that has been received by a broadcast is played in response to a playback operation. In claim 2, the playback operation comprises a track end. Thus, it is the track end and not a custom disc with a DTMF that induces the playing of a message in the claimed invention, and Robbins' invention has little to do with the method as claimed. While the remaining claims that

depend from claim 1 are also separately patentable, applicant deems further remarks regarding these claims unnecessary in view of the remarks directed at the rejection so far.

Regarding claim 21, Hazenfield lacks a wireless receiver module that receives messages from a wireless broadcast and stores the messages. Also, in Hazenfield, messages aren't output in response to a playback operation, they are instead output in response to control signals received in the system of Hazenfield as discussed above. The gap between Hazenfield in the digital audio media player claimed in claim 21 is large and the conclusions of the examiner regarding obviousness are unsupported by any evidence from the prior art. Hazenfield contemplates the distribution of messages on fixed media, as discussed above. Hazenfield clearly contemplates only the sending of control signals in the form play lists over wireless channels. Hazenfield thus discloses an approach that is exactly opposite that adopted by the digital audio media player defined in claim 21. The digital audio media player in claim 21 provides the ability to have a user of the media player receive messages while playing an ordinary digital audio medium, such as a CD. In contrast, Hazenfield requires special message CD's to be recorded. These message CD's are useful for people in the business of advertising, but would be of little use in reaching an advertising base including users of portable CD players, because the users of portable CD players will not gladly accept specially designed CD's including messages. Hazenfield clearly contemplates a distribution system directed towards commercial entities that have a need to provide advertising messages, whereas the digital

audio media player of claim 21 enables messaging to end users of the portable media players.

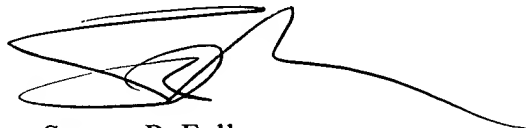
Regarding claim 22, messages in Hazenfield are never loaded into memory. As discussed above, Hazenfield only contemplates the distribution of messages on a fixed media. The fixed media serves as the basis for the storage of messages, and there is no disclosure of loading the messages into the memory of a digital audio media player.

Remaining dependent claims not specifically addressed are maintained by applicant as being separately patentable. The above traversals are believed sufficient in view of the deficiencies in the stated rejections. For all of the above reasons, applicant requests reconsideration and allowance of the application. Should the examiner believe that an interview would expedite prosecution, the examiner is invited to contact the undersigned attorney at the below listed number.

Respectfully submitted,

GREER, BURNS & CRAIN, LTD.

By



Steven P. Fallon
Registration No. 35,132

September 9, 2004

300 South Wacker Drive, Suite 2500
Chicago, Illinois 60606
(312) 360-0080
Customer No. 24978

P:\DOCS\0324\63920\668740.DOC